

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

CASE NUMBER: 2:21-cv-01689-DCN

USAA Casualty Insurance Company,

Plaintiff,

v.

Vincent J. Rafferty, Jr., as Personal
Representative of the Estate of Megan
Walters Jenkins,

Defendant.

**COMPLAINT
(Declaratory Judgment)
(Non-Jury)**

The Plaintiff, USAA Casualty Insurance Company (hereinafter “USAA CIC”), seeks declaratory relief to determine the rights of the parties, and alleges and shows as follows:

JURISDICTION AND VENUE

1. USAA CIC is an insurance company organized and existing under the laws of the State of Texas with its principal place of business in the State of Texas. USAA CIC is authorized to issue insurance policies in the State of South Carolina.

2. Upon information and belief, decedent Megan Walters Jenkins was a citizen and resident of Dorchester County, South Carolina at all relevant times. Upon information and belief, the Dorchester County Probate Court appointed Vincent J. Rafferty, Jr. as Personal Representative for the Estate of Megan Walters Jenkins.

3. This action is brought under the provisions of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. and Rule 57, Fed. R. Civ. P.; there is a real and justiciable controversy between the parties, and by these proceedings USAA CIC asks this Court to inquire into and declare the rights and obligations of the parties hereto arising out of the facts set forth below.

4. The amount in controversy exceeds Seventy-Five Thousand and No/100 (\$75,000.00) Dollars, exclusive of interests and costs, as the insurance policy at issue provides an underinsured motorist property damage limit of \$100,000.00 per accident. There is complete diversity of citizenship. Therefore, this Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §1332(a)(1).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) because the Defendant was a resident of Dorchester County, South Carolina at all relevant times and a substantial part of the acts or omissions giving rise to the claim occurred in this district.

FACTS

6. USAA CIC issued a personal auto policy, Policy No. 01772 52 65C 7102 7, to Megan Jenkins with effective dates of August 15, 2019 to February 15, 2020 (the “Policy”). The Policy lists a 2013 Toyota Corolla as the insured vehicle. The USAA CIC Policy provides an underinsured motorist (“UIM”) property damage coverage limit of \$100,000 each accident. A complete copy of the Policy is attached hereto as Exhibit A, and USAA CIC hereby incorporates the Policy in its entirety.

7. The Policy provides in pertinent part:

DEFINITIONS

O. **“Your Covered Auto”** means:

1. Any vehicle shown on the Declarations.
2. Any **newly acquired vehicle**.
3. Any **trailer you own**.

PART C – UNINSURED MOTORISTS COVERAGE (referred to as UM Coverage) and **UNDERINSURED MOTORISTS COVERAGE** (referred to as UIM Coverage)

INSURING AGREEMENT

B. UIM Coverage

1. **We** will pay the following damages which a **covered person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of an auto accident:
 - a. **BI** sustained by a **covered person**; and
 - b. **PD** to **your covered auto**.

8. On September 8, 2019, Defendant Megan Jenkins was riding her bicycle on the shoulder of US 78 in Dorchester County, South Carolina when she was struck by a motor vehicle operated by Lindsay Walters.

9. As a result of the collision, the Estate of Megan Jenkins filed suit in the Dorchester County Court of Common Pleas against Lindsay Walters, styled as: Vincent J. Rafferty, Jr., as Personal Representative of The Estate of Megan Walters Jenkins v. Lindsay N. Walters, Civil Action Number 2021-CP-18-00316 (hereinafter referred to as the “Underlying Complaint”).

10. In the Underlying Complaint, the Estate alleges that Megan Jenkins was riding her bicycle on the shoulder of the road when Lindsay Walters departed from her lane of travel and struck Megan Jenkins.

11. The Underlying Complaint does not allege that any vehicle that would qualify as a “your covered auto” under the terms of the USAA CIC Policy was involved in the collision.

12. Upon information and belief, the liability carrier for Lindsay Walters tendered its policy limits for liability coverage.

13. The Estate of Megan Jenkins has asserted a claim for UIM bodily injury and UIM property damage coverage from USAA CIC.

14. USAA CIC tendered its UIM bodily injury limits to her Estate, but seeks this deduction as to whether the UIM property damage coverage applies

FOR A FIRST DECLARATION

15. The Plaintiff repeats, realleges, and incorporates the preceding paragraphs as if fully set forth verbatim herein.

16. Under the terms of the USAA CIC Policy, UIM property damage coverage is limited to “property damage” to “your covered auto.”

17. The USAA CIC Policy defines the term “your covered auto” as vehicles shown on the Declarations, “newly acquired vehicles,” and any “trailer” you own.

18. At the time of the September 8, 2019 collision alleged in the Underlying Complaint, Megan Jenkins was riding her bicycle.

19. The September 8, 2019 collision alleged in the Underlying Complaint did not result in any damage to a “your covered auto” as that term is described in the Policy.

20. Therefore, USAA CIC is entitled to a declaration that the above-referenced Policy does not provide UIM property damage coverage for any claims asserted in the Underlying Complaint or for any claims arising out of the September 8, 2019 accident referenced in the Underlying Complaint.

WHEREFORE, USAA CIC requests that this Honorable Court inquire into these matters and declare that the USAA CIC Policy does not provide UIM property damage coverage to the Estate of Megan Jenkins for the September 8, 2019 accident, together with costs and disbursements incurred and such other and further relief as the Court may deem just and proper.

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Columbia, South Carolina
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